

P-3123/NA-93-198 ORDER DETERMINING THAT NO FURTHER REFUND IS REQUIRED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Application by Continental
Telecommunications Corporation of Minnesota
for Authority to Provide Private Line and
Special Access Service in Minnesota

ISSUE DATE: June 24, 1994

DOCKET NO. P-3123/NA-93-198

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FURTHER REFUND IS REQUIRED

PROCEDURAL HISTORY

On April 22, 1994, the Commission issued its ORDER APPROVING PETITION WITH REQUIREMENTS AND REQUIRING FURTHER FILINGS in the above-captioned matter. In that Order the Commission granted Continental Telecommunications Corp. of Minnesota (Continental) a certificate of authority to provide dedicated, non-switched local and interexchange private line and special access service in the Minneapolis/St. Paul metropolitan area. With its certificate of authority, Continental would begin providing service in place of that offered by Continental Cablevision of St. Paul (CCSP), Continental's affiliate.¹

The April 22, 1994, Order also addressed issues regarding CCSP's provision of service prior to Continental's certification. The Commission found that CCSP had improperly provided service to the Minnesota Department of Transportation (MnDOT) and to the Revisor of Statutes (the Revisor) without Commission certification. Because Continental would now be providing authorized service in CCSP's stead, the Commission found that CCSP's prior service was only relevant in the context of a possible refund. The Commission ordered the Department of Public Service (the Department) to file a report regarding any possible refunds due because of CCSP's noncertified service.

On May 23, 1994, the Department issued its report recommending that the Commission order no further refund for CCSP's noncertified service.

The matter came before the Commission for consideration on June 14, 1994.

FINDINGS AND CONCLUSIONS

I. The Department Report

A. The Factual Background

The Department began investigating CCSP's service to MnDOT in 1992. During the

¹ Both Continental and CCSP are wholly owned by Continental Telecommunications Corp., a Massachusetts corporation.

investigation CCSP asserted that, as a cable provider offering private line service through a cable loop, it was not offering telephone service subject to the Commission's jurisdiction. CCSP argued that state jurisdiction over its cable offering was preempted by the Federal Cable Act.

In December, 1992, the Department gave CCSP its opinion that CCSP's service to MnDOT was telephone service subject to state regulation. CCSP's parent corporation responded by creating a separate subsidiary, Continental, which applied for Commission certification in March, 1993. The Department was aware that CCSP continued its service to MnDOT, pending resolution of Continental's certification proceeding. The Department was also aware that CCSP was running service tests for the Revisor of Statutes.

In August, 1993, without informing state regulators, CCSP installed private line service in the Revisor's office and began providing private line service. Neither the Department nor the Commission was aware of this fact until it came out in Continental's March 23, 1994, certification hearing.

CCSP later explained that it had begun serving the Revisor under the mistaken belief that it could provide private line service to any party pending the resolution of Continental's certification proceeding. After it was informed otherwise at the March 23, 1994, hearing, CCSP voluntarily refunded the revenue it had received from the Revisor.

B. The Department's Recommendation

The Department stated that there had been no allegation of harm to any customer arising from CCSP's service. In the Department's opinion, CCSP acted in good faith in these proceedings. CCSP and its parent corporation believed that CCSP was providing cable service, not regulated telephone service, when it began serving MnDOT. When told that the service was considered telephone service, CCSP's parent promptly formed a subsidiary which would be eligible to apply for a certificate of authority to provide service.

The Department stated that CCSP erred when it began serving the Revisor during the pendency of the certification proceedings. Because CCSP made a full and voluntary refund, however, the Department recommended that no further refund be required.

III. Commission Action

The Commission finds that no further refund will be required for CCSP's service to MnDOT or to the Revisor. Because the situations differ, the Commission will discuss the two service offerings separately.

A. CCSP's Service to MnDOT

Private line and special access are still fairly new service offerings. The law is still being developed in this area as parties raise questions regarding new service options and technological developments.

The fact that CCSP offered its private line service to MnDOT over CCSP's cable loop raised genuine differences of opinion among the parties. Although they were not adopted by the Department or the Commission, CCSP's arguments regarding the nature of the service offering and federal preemption were not frivolous. Given the early stage of development of the service and the questions which had been raised regarding it, CCSP did not show bad faith by continuing to abide by its contract with MnDOT during the pendency of the certification proceedings.

The Commission also agrees with the Department's observation that there has been no complaint lodged regarding CCSP's service to MnDOT. There is no allegation of customer harm to be addressed.

For these reasons, the Commission finds that the public interest does not require that CCSP provide a refund for services offered to MnDOT.

B. CCSP's Service to the Revisor

There is a basic difference between CCSP's service to the Revisor and its service to MnDOT. When CCSP began serving the Revisor, CCSP was on notice that the Department had recommended that a certificate of authority be required. While it is true that no formal Commission determination had yet been made, it was at least imprudent for CCSP to initiate a new service offering when a decision was pending in the certification proceeding.

On the other hand, the Commission agrees with the Department that no allegation of harm has been raised regarding CCSP's service to the Revisor. No customer has requested a refund, or questioned CCSP's rates or service.

Most significantly, CCSP implemented a full and voluntary refund to the Revisor after the full facts were revealed in the March 23, 1994, hearing. Due to the fact that a full refund has been made, and no harm has befallen any customer or the general public, the Commission will not require any further refund.

ORDER

1. The Commission determines that no further refund is required for CCSP's service to the Minnesota Department of Transportation or to the Revisor of Statutes.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)